

# House Watch

A summary of today's House actions;  
published daily when the House is in session.



6/18/08

## FINAL PASSAGE

### [HB 5838](#)

(Melton)

The bill would increase the cap on the mini-tort provision in the no-fault auto insurance system from \$500 to \$1,500.

- Hoogendyke-1 not adopted
- Palmer-2 not adopted
- Hoogendyke-3 not adopted
- HB 5838 advanced to 3<sup>rd</sup> Reading
- HB 5838 was passed [RC 533: 78 yes, 31 no]
- IE was ordered

### [HB 4210](#)

(Miller)

House Bill 4210 would amend the Natural Resources and Environmental Protection Act (MCL 324.16601) to require an agency of the state conducting an event open to the public to place receptacles specifically designated for the collection of recyclable plastic, aluminum, or glass containers on the premises where the event is held, if beverages are provided at the event in such containers.

- Committee substitute H-4 adopted
- HB 4210 advanced to 3<sup>rd</sup> Reading
- HB 4210 was passed [RC 534: 105 yes, 4 no]
- IE was ordered

## HB 4211

(Miller)

Under House Bill 4211, the Department of Management and Budget would have to issue directives requiring all buildings and facilities owned or operated by a state agency that are open to the public to provide for the recycling of glass, plastic, and aluminum beverage containers. The bill would amend the Management and Budget Act (MCL 18.1229).

- Committee substitute H-3 adopted
- Hoogendyke-2 adopted
- HB 4211 advanced to 3<sup>rd</sup> Reading
- HB 4211 was passed [RC 535: 94 yes, 15 no]
- IE was ordered

## HB 4480

(Miller)

The bill would amend Section 264 of the Management and Budget Act to allow the DMB to bar a vendor from consideration of a the award for a contract for goods or services to this state or suspend the procurement of goods and services from the vendor if, within the immediately preceding three years, the vendor, officer of the vendor, or owner with a 25 percent or more interest in the vendor has done one or more of the following:

- Been convicted of a criminal offense incident to the application for or performance of a state contract or subcontracts.
- Been convicted of any offense that negatively reflects on the vendor's business integrity, including embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or a violation of state or federal antitrust statutes.
- Been convicted of any other offense, violated any state or federal law, which in the opinion of the department indicates the vendor is unable to perform responsibility or that would reflect a lack of integrity that could negatively impact upon this state. An offense or violation under this section could include violation of the Natural Resources and Environmental Protection Act; Public Act 166 of 1965 (Prevailing Wage on State Projects); Public Act 390 of 1978 (Payment of Wages and Fringe Benefits); or a willful or persistent violation of the Michigan Occupational Safety and Health Act.
- Failed to substantially perform a state contract or subcontract according to its terms, conditions, and specifications within specified time limits.
- Violated department bid solicitation procedures or the terms of solicitation after bid submission.
- Refused to provide information or documents required by a contract, including information necessary for monitoring contract performance.
- Failed to respond to requests for information on vendor performance, or accumulated repeated substantiated complaints regarding a contract or purchase order.
- Failed to perform a state contract or contract in a manner consistent with state or federal law, rule, or regulation.

- D. Acciavitti-1 not adopted
- HB 4480 advanced to 3<sup>rd</sup> Reading
- HB 4480 was passed [RC 536:67 yes, 42 no]
- IE was ordered

## **HB 5270**

**(Griffin)**

Currently, provisions of the Occupational Code require a real estate broker to conspicuously display his or her broker's license and the license of each real estate salesperson that he or she employs. The licenses must be displayed in the real estate broker's place of business. The bill would amend the act to delete this requirement. The act would continue to require that the license of any real estate salesperson in a real estate broker's employ be kept in the broker's custody and control.

- HB 5270 advanced to 3<sup>rd</sup> Reading
- HB 5270 was passed [RC 537: 109 yes, 0 no]
- IE was ordered

## **HB 5294**

**(Simpson)**

The bill would amend the title of the Consumer Mortgage Protection Act (CMPA) (MCL 445.1631 and 445.1632) to apply the act to high-cost home loans. The bill would also rename the act as the "Home Loan Protection Act" (HLPa) and exempt a depository financial institution, or its operating subsidiary, from regulation under the act. Primarily, the bill would define new terms, revise the definitions of several terms, and eliminate several other terms. "Home loan" would replace the term "mortgage loan," and would mean a closed-end or open-end credit plan or other extension of credit that did not exceed the maximum original principal obligation, met the requirements for a federally related mortgage loan under federal regulations, and was not a reverse mortgage transaction or a loan primarily for business, agricultural, or commercial purposes. A "high-cost home loan" would mean a home loan where the terms of the loan met or exceeded one or more thresholds, with "threshold" meaning a rate threshold or a total points and fees threshold—both terms are defined in the bill. A "high-cost home loan" would not include a government-sponsored loan.

- Committee substitute H-2 adopted
- Elsenheimer-2 withdrawn
- Amos-3 not adopted
- Green-4 not adopted
- HB 5294 advanced to 3<sup>rd</sup> Reading
- HB 5294 was passed [RC 538: 80 yes, 29 no]
- IE was ordered

## **HB 5295**

**(Tobocman)**

The bill would amend sections of the HLPa (MCL 445.1633 and 445.1634) to prohibit certain conduct on the part of a creditor. "Creditor" would be defined by House Bill 5294 as meaning a lender as that term is defined under federal law (24 CFR 3500.2) or a mortgage broker; "creditor" would replace the term "lender" in the act, and "home loan" would replace "mortgage loan".

The bill would prohibit certain conduct on the part of a creditor, including the following:

- Extending a home loan to a borrower unless the creditor reasonably determined, as specified in the bill, that the borrower was able to repay the loan according to the loan terms. Use of an

automated underwriting system complying with the act's provisions would constitute a reasonable method for determining a borrower's ability to repay a home loan.

- Knowingly or intentionally refinancing an existing home loan if the new loan did not have a reasonable, tangible net benefit to the borrower when specified circumstances were considered.
- Steer, counsel, or direct a consumer to rates, charges, principal amounts, or prepayment terms that were not reasonably advantageous to the borrower.
- Materially mischaracterize a borrower's credit history or the home loans available to a borrower from the creditor.
- Materially mischaracterize the appraisal value of a dwelling.
- If unable to suggest, offer, or recommend a reasonably advantageous home loan, discourage the borrower from seeking a home loan from another creditor.
- Charge or collect any prepayment fee or penalty on a home loan; a prepayment penalty provision would be void and unenforceable.

The bill would also regulate the manner in which a creditor could charge late payment fees and fees for informing a person of the balance due to pay off a home loan.

- Committee substitute H-2 adopted
- Caswell-2 adopted
- Schuitmaker-3 withdrawn
- Pavlov-4 not adopted
- Green-5 not adopted
- Schuitmaker-6 adopted
- HB 5295 advanced to 3<sup>rd</sup> Reading
- HB 5295 was passed [RC 540: 81 yes, 28 no]
- IE was ordered

## **HB 5296**

**(Melton)**

The bill would amend the HPLA (MCL 445.1635). Currently, Section 5 prohibits a mortgage loan with a term of less than five years from having a payment schedule with regular periodic payments that, when aggregated, do not fully amortize the outstanding principal balance. The bill would delete this provision.

Instead, Section 5 would subject a high-cost loan to several limitations and prohibited practices in addition to other requirements contained in the act. Under the bill, a creditor, in relation to a high-cost home loan, could not:

- Make a loan without receipt of a certification documenting that the borrower had received counseling from an approved nonprofit organization on the advisability of the loan transaction.
- Include in the loan documents for a high-cost home loan, or charge a borrower, any prepayment fees or penalties.
- Pay a contractor for home improvements from the proceeds of a loan unless the payment was payable to the borrower, or to both, or to an escrow account as specified in the bill.
- Charge a fee to modify, renew, extend, or amend a loan or defer any payment due under the loan terms.
- Finance points or fees in excess of 2 percent of the loan amount.

In addition, restrictions would be placed on a high-cost home loan. Among other restrictions, the regularly scheduled periodic payments would have to cover the full amount of interest due, and

the loan provisions could not increase the interest rate after default. In addition, a high-cost home loan document creating a debt or an interest in property to secure a debt would have to include a notice printed conspicuously on the face of the document that stated it was a high-cost home loan subject to special rules under state laws and that a purchaser or assignee could be liable for all claims and defenses of the borrower.

- Committee substitute H-1 adopted
- Moore-2 not adopted
- HB 5296 advanced to 3<sup>rd</sup> Reading
- HB 5296 was passed [RC 539: 81 yes, 28 no]
- IE was ordered

#### **HB 5297** (Angerer)

The bill would amend the HLPa (MCL 445.1636 and 445.1637). Currently, when a person applies for a mortgage loan, the lender is required to provide the applicant with the "Borrowers Bill of Rights," a document which outlines various rights such as the right to be informed about the total cost of the loan, and also a written notice entitled "Consumer Caution and Home Ownership Counseling Notice" regarding the value of receiving credit counseling before taking out the loan. The bill would delete from the Borrowers Bill of Rights a reference to the HUD settlement costs booklet "Buying Your Home" and delete from the written notice regarding counseling a reference to HUD's counseling hotline.

- Committee substitute H-1 adopted
- LaJoy-2 not adopted
- HB 5297 advanced to 3<sup>rd</sup> Reading
- HB 5297 was passed [RC 541: 106 yes, 2 no]
- IE was ordered

#### **HB 5299** (Clack)

The bill would add two new sections to the HLPa (MCL 445.1637c and 445.1637d) regarding sales of high-cost home loans on the secondary market. A person who purchased or was assigned a high-cost loan would be subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against the original creditor of the loan. The bill would provide an exemption from this liability if the purchaser or assignee demonstrated by a preponderance of the evidence that (1) it had a policy in place at the time of the purchase or assignment expressly prohibiting its purchase or acceptance of assignment of any high-cost loans; (2) required by contract that a seller or assignor of home loans to the purchaser or assignee represent and warrant that the seller or assignor would not sell or assign any high-cost home loans to that purchaser or assignee or that the seller or assignor was a beneficiary of a representation and warranty from a previous seller or assignor to that effect; and (3) exercised reasonable due diligence at the time of purchase or assignment of home loans or within a reasonable period of time after the purchase or assignment, to prevent the purchase or taking assignment of any high-cost loans. Reasonable due diligence would have to provide for sampling and would not require loan-by-loan review. The bill would limit the amount that a

borrower could assert in a claim against any subsequent holder or assignee of the home loan to the monthly payments already paid, finance charges other than those already collected in the monthly payments, forfeiture of future interest on the loan, reasonable costs, and reasonable attorney fees. A claim would have to be made within five years of the closing of a high-cost home loan for a violation of the act in connection with the loan as an original action. Any defense, claim, or counterclaim could be mounted at any time during the life of the loan after an action to collect on the home loan or foreclosure on the collateral securing the home loan had been initiated, or after the debt arising from the home loan had been accelerated or the home loan had become 60 days in default.

- Committee substitute H-2 adopted
- Garfield-2 not adopted
- Agenda-3 adopted [RC 542: 80 yes, 29 no]
- Meltzer-4 not adopted
- HB 5299 advanced to 3<sup>rd</sup> Reading
- HB 5299 was passed [RC 543: 72 yes, 37 no]
- IE was ordered

#### **HB 5300** (Corriveau)

The bill would amend the HPLA (445.1638 and 445.1639) to allow the commissioner of the Office of Financial and Insurance Regulation (OFIR) to promulgate rules under the Administrative Procedures Act as necessary to implement and administer the act. The commissioner could provide guidance to any person over which the commissioner had regulatory authority on the application of and compliance with the HPLA.

- Committee substitute H-1 adopted
- Rick Jones-2 not adopted
- HB 5300 advanced to 3<sup>rd</sup> Reading
- HB 5300 was passed [RC 544:

#### **HB 5301** (Gaffney)

The bill would amend Sections 10 and 11 of the HPLA (445.1640 and 445.1641). Currently, Section 10 provides that the attorney general or county prosecutor for the county in which an alleged violation of the act occurred may bring an action to obtain a declaratory judgment that a method, act, or practice was a violation; enjoin a person who was engaging or was about to engage in such acts; and/or obtain a civil fine of not more than \$10,000 for a first offense and not more than \$20,000 for a second or subsequent offense. The bill would delete the underlined portion and add that in addition to any other remedies or penalties imposed by the act, a person who violated the act or an order made or rule promulgated under the act, or who directly or indirectly counseled, aided, or abetted in a violation would be responsible for a civil fine of not more than \$3,000 for each violation, not to exceed \$30,000 for a transaction resulting in more than one violation, plus the costs of investigation. This penalty would apply to a creditor, a member, officer, director, or employee of a creditor, or any other person. Further, Section 11 currently does not count certain unintentional errors or acts as violations if the violations were

corrected within 60 days after discovery. That provision would be deleted. Instead, Section 11 would make it a misdemeanor punishable by a fine of not more than \$15,000 and/or imprisonment for not more than one year for a creditor, a member, officer, director, or employee of a creditor, or any other person, to knowingly violate the HLPa or an order made or rule promulgated under the act.

- Committee substitute H-1 was adopted
- Pavlov-2 not adopted
- HB 5301 advanced to 3<sup>rd</sup> Reading
- HB 5301 was passed [RC 545: 101 yes, 8 no]
- IE was ordered

### **HB 5302**

**(Ebli)**

The bill would amend the HLPa (445.1642 and 445.1643) to specify that the rights conferred by the act would be independent of and in addition to any other rights under state or federal law. The bill would also apply the HLPa to any home loan or other transaction governed by the act concerning real property located within the state. The bill would eliminate a provision requiring the Office of Financial and Insurance Services to develop and make available to local governments, financial institutions, and other interested persons a model program or programs for financial education.

- Committee substitute H-1 adopted
- Amos-2 not adopted
- HB 5302 advanced to 3<sup>rd</sup> Reading
- HB 5302 was passed [RC 546: 109 yes, 0 no]
- IE was ordered

### **HB 5303**

**(Calley)**

This bill would also amend the HLPa (445.1644 and 445.1645). Section 14 states that the federal government and the state have sole regulatory responsibility over home loans made within the state and the manner in which that business is conducted; the section also preempts certain actions of local governments. The bill would delete a provision specifying that the illegality or invalidity of any provision of Section 14 would not affect any legal and valid provision or application of the entire section (which made the provisions and applications of the section severable). Further, the bill would replace the term "mortgage loans" with "home loans."

- Committee substitute H-1 adopted
- Pavlov-2 not adopted
- HB 5303 advanced to 3<sup>rd</sup> Reading
- HB 5303 was passed [RC 547: 106 yes, 2 no]
- IE was ordered

## **HB 5307**

**(Young)**

House Bill 5307 would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act (MCL 445.1672 and proposed 445.1674a). To the list of 14 prohibited actions on the part of a person licensed or registered under the act, the bill would add that a licensee or registrant could not fail or neglect to do any of the following in connection with the brokering, servicing, or making of any mortgage loan:

- Act in good faith and with fair dealing in any transaction, practice, or course of business.
- Safeguard and account for any money handled for the borrower.
- Follow reasonable and lawful instructions from the borrower.
- Use reasonable skill, care, and diligence.
- Disclose clearly and in a timely manner to the borrower material information that might reasonably affect the borrower's rights, interests, or ability to receive the intended benefit from the mortgage loan, including the total compensation the broker would receive from any of the loan options the licensee or registrant presented to the borrower.
- Make reasonable efforts to secure a mortgage loan that was reasonably advantageous to the borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan.

The above listed duties and standards of care could not be waived or modified.

Further, the bill would add a new section to specify that the Home Loan Protection Act applies to a licensee or registrant under the Mortgage Brokers, Lenders, and Servicers Licensing Act, and would require a licensee or registrant to comply with the requirements of the HLP Act in connection with any home loans. A licensee or registrant would also be subject to the remedy and penalty provisions of the HLP Act for a violation of the 14 prohibitions currently contained in Section 22.

- Committee substitute H-1 adopted
- Rick Jones-2 not adopted
- HB 5307 advanced to 3<sup>rd</sup> Reading
- HB 5307 was passed [RC 548: 85 yes, 23 no]
- IE was ordered

## **HB 5308**

**(Valentine)**

House Bill 5308 would similarly amend the Secondary Mortgage Loan Act (493.74 and proposed 493.74a) to apply to licensees and registrants under that act making secondary mortgage loans.

- Committee substitute H-1 adopted
- Pavlov-2 not adopted
- HB 5308 advanced to 3<sup>rd</sup> Reading
- HB 5308 was passed [RC 549: 81 yes, 27 no]
- IE was ordered



# MOTIONS AND RESOLUTIONS

[HR 297](#)

(Tobocman)

A resolution to express support for the construction of a replacement rail tunnel between Detroit and Windsor.

- HR 297 was adopted